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 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR No. 07-364-RC
)	
Plaintiff,)	<u>RULE 11(c)(1)(C) SPECIFIED</u>
)	<u>SENTENCE PLEA AGREEMENT FOR</u>
v.)	<u>DEFENDANT PYROTEK SPECIAL</u>
)	<u>EFFECTS, INC.</u>
PYROTEK SPECIAL EFFECTS,)	
INC.,)	
)	
Defendant.)	
)	

1. This constitutes the plea agreement Pyrotek Special Effects, Inc. ("defendant") and the United States Attorney's Office for the Central District of California ("the USAO") in the above-captioned case. This agreement is limited to the USAO and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities.

2. The parties expressly agree that this Agreement is entered into and is to be controlled by Federal Rule of Criminal Procedure 11(c)(1)(C). The USAO and defendant understand and

1 agree that: (a) if the Court accepts this Agreement, the parties
2 are bound by the terms of the Agreement; and (b) if the Court
3 does not accept this Agreement; any party may withdraw from the
4 Agreement and defendant may withdraw its plea of guilty. The
5 parties request that the Court accept this Agreement at the time
6 of the entry of the guilty plea.

7 PLEA TO INFORMATION

8 3. Defendant agrees to plead guilty to the single-count
9 misdemeanor information in United States v. Pyrotek Special
10 Effects, Inc., CR No. 07-364-RC.

11 CORPORATE AUTHORIZATION

12 4. Defendant represents that it is authorized to enter
13 into this Agreement. On or before the date of entry of the Plea
14 Agreement, defendant shall provide to the United States and the
15 Court a written statement in the form of notarized legal
16 documents certifying that defendant corporation is authorized to
17 enter into and comply with all of the provisions of this Plea
18 Agreement. The resolutions further shall certify that a
19 corporate representative is authorized to take these actions, and
20 that all corporate formalities for such authorizations have been
21 observed (see Attachment B).

22 ORGANIZATIONAL CHANGES AND APPLICABILITY

23 5. This Agreement shall bind defendant, its successor
24 corporation if any, and any other person or entity that assumes
25 the liabilities contained herein ("successors-in-interest").
26 Defendant, or its successors-in-interest, if applicable, shall
27 provide the USAO and the United States Probation Office for the
28 Central District of California with immediate notice of any name

1 change, business reorganization, sale or purchase of assets,
2 divestiture of assets, or similar action impacting their ability
3 to pay the fine or affecting this Agreement. No change in name,
4 change in corporate or individual control, business
5 reorganization, change in ownership, merger, change of legal
6 status, sale or purchase of assets, or similar action shall alter
7 defendant's responsibilities under this Agreement. Defendant
8 shall not engage in any action to seek to avoid the obligations
9 and conditions set forth in this Agreement.

10 NATURE OF THE OFFENSE

11 6. The parties stipulate and agree that under well-
12 established principles of corporate liability and respondeat
13 superior, as these principles apply in this case, defendant is
14 liable for the actions of its agents and employees. New York
15 Central and Hudson River R.R. v. United States, 212 U.S. 481, 495
16 (1909); United States v. Beusch, 596 F.2d 871 (9th Cir. 1979);
17 United States v. Hilton Hotels Corporation, 467 F.2d 1004-1007
18 (9th Cir. 1972).

19 7. In order for defendant to be guilty of Improper Storage
20 of Explosive Materials, in violation of Title 18, United States
21 Code, Sections 842(j) and 844(b), the following must be true:
22 defendant, by and through the actions of its agents and employees
23 did (1) knowingly store explosive materials; (2) within a motor
24 vehicle; (3) in an improper manner. Specifically, defendant did
25 knowingly store technical pyrotechnic devices that were not
26 marked with an EX (explosives) number for each substance,
27 article, or device contained therein and did not have markings
28 identifying the materials as "Articles, technical for pyrotechnic

1 purposes, UN0431" in violation of federal regulations. Defendant
2 admits that defendant is, in fact, guilty of this offense as
3 described in the information.

4 PENALTIES

5 8. The statutory maximum sentence that the Court can impose
6 against a corporate defendant for a violation of Title 18, United
7 States Code, Sections 842(j) and 844(b), is a five-year period of
8 probation; a fine of \$200,000 or twice the gross gain or gross
9 loss resulting from the offense, whichever is greatest; and a
10 mandatory special assessment of \$125.

11 SUSPENSION/REVOCATION/DEBARMENT

12 9. Defendant understands that if defendant holds any
13 regulatory licenses or permits, the convictions in this case may
14 result in the suspension or revocation of those licenses and
15 permits. By this Agreement, the USAO makes no representation or
16 promise concerning suspension or debarment of defendant from
17 contracting with the United States or with any office, agency, or
18 department thereof. Suspension and debarment of organizations
19 convicted under various federal environmental protection and
20 criminal statutes is a discretionary administrative action solely
21 within the authority of the federal contracting agencies.

22 FACTUAL BASIS

23 10. Defendant and the USAO agree and stipulate to the
24 statement of facts provided below. It is not meant to be a
25 complete recitation of all facts relevant to the underlying
26 criminal conduct or all facts known to either party that relate
27 to that conduct.

28 On June 20, 2006, in Culver City, California, Pyrotek

1 Special Effects, Inc., by and through the actions of its
2 authorized agents and employees, did knowingly store explosives
3 materials, namely, technical pyrotechnic devices, within a motor
4 vehicle in an improper manner. Specifically, the packages for
5 said technical pyrotechnic devices were not marked with an EX-
6 number ("explosives number") for each substance, article, or
7 device contained therein and did not have markings identifying
8 the materials as "Articles, technical for pyrotechnic purposes,
9 UN0431," in violation of regulations promulgated pursuant to the
10 HMTS, Title 49, United States Code, Section 5101 et seq. and 49
11 Code of Federal Regulations, Sections 172.101, 172.301, and
12 172.320.

13 WAIVER OF CONSTITUTIONAL RIGHTS

14 11. By pleading guilty, defendant gives up the following
15 rights:

- 16 a) The right to persist in a plea of not guilty.
17 b) The right to a speedy and public trial by jury.
18 c) The right to the assistance of legal counsel at
19 trial, including the right to have the Court appoint counsel for
20 defendant for the purpose of representation at trial. (In this
21 regard, defendant understands that, despite its plea of guilty,
22 it retains the right to be represented by counsel -- and, if
23 necessary, to have the court appoint counsel if defendant cannot
24 afford counsel -- at every other stage of the proceeding.)
25 d) The right to be presumed innocent and to have the
26 burden of proof placed on the government to prove defendant
27 guilty beyond a reasonable doubt.
28 e) The right to confront and cross-examine witnesses

1 against defendant.

2 f) The right, if defendant wished, to testify on
3 defendant's own behalf and present evidence in opposition to the
4 charges, including the right to call witnesses and to subpoena
5 those witnesses to testify.

6 g) The right not to be compelled to testify, and, if
7 defendant chose not to testify or present evidence, to have that
8 choice not be used against defendant.

9 SENTENCING FACTORS

10 12. Defendant and the USAO agree and stipulate that,
11 pursuant to United States Sentencing Guidelines ("U.S.S.G.") §§
12 8C2.1 and 8C2.10, the sentencing guidelines are not applicable in
13 determining the fine for an organization violating statutes
14 relating to the environment.

15 SENTENCING AGREEMENT

16 13. Pursuant to Federal Rule of Criminal Procedure
17 11(c)(1)(C), the USAO and defendant agree that an aggregate
18 criminal fine (including community service) of \$150,000 (one
19 hundred fifty thousand dollars) is appropriate in this case.
20 Pursuant to U.S.S.G. §§ 8D1.1 and 8D1.2, defendant shall be
21 sentenced to a term of organization probation for two years,
22 based upon the following factors set forth in 18 U.S.C. §
23 3553(a): the nature and circumstances of the offense and the
24 history and characteristics of the defendant; and the need for
25 the sentence imposed to reflect the seriousness of the offense,
26 to promote respect for the law, to provide just punishment for
27 the offense, and to afford adequate deterrence to criminal
28 conduct. Defendant and the USAO further agree and stipulate that

1 defendant shall be placed on probation for two years under the
2 following terms and conditions:

3 a. Defendant shall pay a total criminal fine of
4 \$150,000 with \$75,000 of that fine suspended for use in community
5 service and restitution for the response costs of local fire and
6 police agencies as set forth below in paragraphs 12(f) and 15.

7 b. Specifically, defendant shall pay a criminal fine
8 of \$75,000 as to the single-count Information. The first \$25,000
9 installment of the criminal fine shall be made by a cashier's
10 check (or equivalent) payable to the Clerk of the United States
11 District Court, within seven (7) days of the date of sentencing.
12 The second \$25,000 installment of the criminal fine shall be made
13 by a cashier's check (or equivalent) payable to the Clerk of the
14 United States District Court, within one year of the date of
15 sentencing. The third \$25,000 installment of the criminal fine
16 shall be made by a cashier's check (or equivalent) payable to the
17 Clerk of the United States District Court, within two years of
18 the date of sentencing.

19 c. Defendant agrees to abide by and follow any lawful
20 orders issued by any local, state, or federal regulatory agency
21 having jurisdiction over the facility.

22 d. Defendant agrees that it will not transport any
23 explosive or hazardous materials itself, but will instead
24 contract such activities to properly licensed and authorized
25 third parties.

26 e. Defendant agrees to pay to the Clerk of the United
27 States District Court on the date of sentencing (or as soon as
28 the Court is able to accept the payment) the mandatory special

1 assessment of \$125 pursuant to 18 U.S.C. § 3013(a)(1)(B)(iii).

2 f. Defendant agrees to pay restitution in the total
3 amount of \$3,534.04 to City of Culver City for costs incurred in
4 responding to, and investigating, this matter. Defendant further
5 agrees that defendant will not seek the discharge of any
6 restitution obligation, in whole or in part, in any present or
7 future bankruptcy proceeding. Defendant further agrees to make
8 restitution listed above within one week of the sentencing
9 hearing in this matter.

10 14. Pursuant to FRCP 32(c)(1)(A)(ii), the parties request
11 that the Court waive the preparation of a pre-sentence report in
12 this matter. The parties further request that the Court sentence
13 defendant at the time the guilty plea to the Information is
14 entered.

15 15. In the event that the Court defers acceptance or
16 rejection of this specified sentence plea until it has reviewed
17 the presentence report in this case, pursuant to Federal Rule of
18 Criminal Procedure 11(c)(3)(A), both defendant and the USAO are
19 free to: (a) supplement the facts stipulated to in this Agreement
20 by supplying relevant information to the United States Probation
21 Office and the Court, and (b) correct any and all factual
22 misstatements relating to the calculation of the sentence.

23 COMMUNITY SERVICE

24 16. The parties agree that \$75,000 of the total criminal
25 fine amount of \$150,000 be suspended for the explicit purpose of
26 defendant applying the suspended amount to performing community
27 service pursuant to §8B1.3 of the Federal Sentencing Guidelines
28 and in furtherance of the sentencing principles provided for

1 under 18 U.S.C. § 3553(a) and paying the restitution described in
2 paragraph 12(f) above. The explicit goal of defendant's required
3 community service is to fund environmental projects, enforcement
4 efforts, and initiatives designed for the enforcement of
5 environmental and public safety regulations, and the benefit,
6 preservation, and restoration of the environment and ecosystems
7 in the Central District of California. These projects and
8 initiatives are to include, but are not limited to, the
9 following: monitoring, study, restoration, and preservation of
10 fish, wildlife, and plant resources; monitoring, study, clean up,
11 remediation, sampling, and analysis of pollution and other
12 threats to the environment and ecosystem; research, study,
13 training, planning, repair, maintenance, education, and public
14 outreach relating to the environment and ecosystem; and
15 enforcement of environmental, public safety, and wildlife
16 protection laws. Accordingly, defendant agrees that on the date
17 of sentencing, defendant shall pay a total of \$71,465.96 to the
18 agencies listed below:

19 a. \$36,465.96 to the California Hazardous Materials
20 Association to be used in designing and providing training to
21 local, state, and federal environmental and public safety
22 investigators and regulators on criminal and civil enforcement
23 actions, including, but not limited to, investigating and
24 prosecuting responses to hazardous waste, hazardous material, air
25 pollution, water pollution, and work place safety violations.

26 b. \$35,000 to the Culver City Police Department to
27 support commercial vehicle and hazardous materials enforcement
28 efforts, including, but not limited to: the procurement of

1 equipment; enforcement personnel training; and funding of
2 operational expenses.

3 17. Defendant agrees that because the payments to the
4 foundation listed above are community service by an organization,
5 defendant will not seek any reduction in its tax obligations as a
6 result of such community service payment. Defendant further
7 agrees that because these payments shall be made pursuant to this
8 Agreement, defendant will not characterize, publicize, or refer
9 to the payment as anything other than a community service
10 payment.

11 DEFENDANT'S OBLIGATIONS

12 18. Defendant agrees:

13 a. To plead guilty as set forth in this Agreement.

14 b. To abide by all sentencing stipulations contained
15 in this Agreement.

16 c. To appear as ordered for all court appearances and
17 obey any other ongoing court order in this matter.

18 d. Not to commit any crime.

19 e. To be truthful at all times with Pretrial
20 Services, the U.S. Probation Office, and the Court.

21 f. To pay the applicable special assessment at or
22 before the time of sentencing.

23 THE USAO'S OBLIGATIONS

24 19. If defendant complies fully with all defendant's
25 obligations under this Agreement, the USAO agrees to abide by all
26 sentencing stipulations contained in this Agreement. In
27 addition, in exchange for defendant's full compliance with its
28 obligations under this Agreement, the USAO agrees not to

1 prosecute defendant for any additional offenses arising out of
2 the traffic stop and investigation conducted by the Culver City
3 Police Department and Fire Department, along with other local and
4 federal agencies, on the date of June 20, 2006, giving rise to
5 this investigation, except as reserved in paragraphs 20 and 21
6 below.

7 BREACH OF AGREEMENT

8 20. If defendant, at any time between the execution of this
9 Agreement and defendant's sentencing knowingly violates or fails
10 to perform any of defendant's obligations under this Agreement
11 ("a breach"), the USAO may declare this Agreement breached. If
12 the USAO declares this Agreement breached, and the Court finds
13 such a breach to have occurred by a preponderance of the evidence
14 as to which the USAO shall have both the burden of production and
15 persuasion, defendant will not be able to withdraw defendant's
16 guilty plea, and the USAO will be relieved of all of its
17 obligations under this Agreement.

18 21. Following a knowing and willful breach of this
19 Agreement by defendant, should the USAO elect to pursue any
20 charge that was not filed as a result of this Agreement, then:

21 a. Defendant agrees that the applicable statute of
22 limitations is tolled between the date of defendant's signing of
23 this Agreement and the USAO's discovery of any knowing and
24 willful breach by defendant.

25 b. Defendant gives up all defenses based on the
26 statute of limitations during the tolling period as set forth in
27 subparagraph (a), any claim of pre-indictment delay, or any
28 speedy trial claim with respect to any such prosecution, except

1 to the extent that such defenses existed as of the date of
2 defendant's signing of this Agreement.

3 SCOPE OF AGREEMENT

4 22. This Agreement applies only to crimes committed by
5 defendant, has no effect on any proceedings against defendant not
6 expressly mentioned herein, and shall not preclude any past,
7 present, or future forfeiture actions or other civil actions.

8 23. This Agreement does not prevent the USAO from
9 prosecuting any individual or other organization for any offense,
10 including the offenses charged in the Information.

11 COURT NOT A PARTY

12 24. The Court is not a party to this Agreement. The USAO
13 and defendant understand and agree that: (a) if the Court accepts
14 this Agreement, the parties are bound by the terms of the
15 Agreement; and (b) if the Court does not accept this Agreement;
16 any party may withdraw from the Agreement and defendant may
17 withdraw its plea of guilty.

18 NO ADDITIONAL AGREEMENTS

19 25. Except as set forth herein, there are no promises,
20 understandings or agreements between the USAO and defendant or
21 defendant's counsel. Nor may any additional agreement,
22 understanding or condition be entered into unless in a writing
23 signed by all parties or on the record in court.

24 //

25 //

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING


26. The parties agree and stipulate that this Agreement will be considered part of the record of defendant's guilty plea hearing as if as if the entire Agreement had been read into the record of the proceeding.

This Agreement is effective upon signature by defendant and an Assistant United States Attorney.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GEORGE S. CARDONA
United States Attorney


JOSEPH O. JOHNS
Assistant United States Attorney
Chief, Public Integrity and Environmental Crimes Section

9/4/07
Date

As an authorized representative of defendant Pyrotek Special Effects, Inc. ("defendant"), I have read this Agreement and carefully discussed every part of it with defendant's attorney. I understand the terms of this Agreement, and I voluntarily agree to those terms. Defendant's attorney has advised me of defendant's rights, of possible defenses, of the Sentencing Guideline provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made to me or defendant other than those contained in this Agreement. No

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1 one has threatened or forced me or defendant in any way to enter
2 into this Agreement. Finally, I am satisfied with the
3 representation provided by defendant's attorney in this matter.

4 

5 Authorized Representative
6 of Pyrotek Special Effects, Inc.
7 Defendant

Sept 4 / 07
Date

8 I am defendant's attorney. I have carefully discussed every
9 part of this Agreement with the authorized representatives of
10 defendant. Further, I have fully advised the authorized
11 representative of defendant's rights, of possible defenses, of
12 the Sentencing Guidelines' provisions, and of the consequences of
13 entering into this Agreement. To my knowledge, the decision of
14 defendant and its authorized representatives to enter into this
15 Agreement is an informed and voluntary one.

16 

17 DUANE R. LYONS
18 Counsel for Defendant
19 Pyrotek Special Effects, Inc.

9/4/07
Date